

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JULY 21, 00

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Central Communications Corp.**

Serial No. 75/353,692

Paul M. Denk for applicant.

John E. Michos, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney).

Before Quinn, Hohein and Chapman, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Central
Communications Corp. to register the mark IRON-WEB for
"providing an electronic bulletin board featuring
information relative to the sale, service, and marketing of
farm and lawn equipment, and providing information about
farm and lawn equipment."¹

¹ Application Serial No. 75/353,692, filed September 8, 1997,
alleging dates of first use of August 3, 1996.

The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, when used in connection with applicant's services, so resembles the previously registered mark IRON NET for "providing access to an electronic bulletin board featuring information concerning heavy equipment available for sale or lease"² as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney filed briefs. An oral hearing was not requested.

Applicant asserts, in urging that the refusal be reversed, that the marks are different. Further, applicant contends that the marks are suggestive (IRON connoting the fact that heavy equipment and farm and lawn equipment are made from iron, and WEB and NET connoting the Internet) and that, therefore, registrant's mark is entitled to a narrow scope of protection. Applicant also argues that the services are different inasmuch as the respective electronic bulletin boards deal with different types of equipment. Applicant further points to the sophistication

² Registration No. 2,112,738, issued November 11, 1997. The word "Net" is disclaimed apart from the mark.

of purchasers and the absence of any known instances of actual confusion.

The Examining Attorney maintains that the marks are similar in overall commercial impression, and that the services, both rendered by way of the Internet, are similar.

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the services. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

We first turn our attention to the services. It is well settled that the services need not be identical or even competitive in nature in order to support a finding of likelihood of confusion. Instead, it is sufficient that the services are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under situations that would give rise, because of the marks employed in connection therewith, to the mistaken belief

that they originate from or are in some way associated with the same producer or provider. See, e.g., *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978).

In the present case, we find that applicant's services of "providing an electronic bulletin board featuring information relative to the sale, service and marketing of farm and lawn equipment, and providing information about farm and lawn equipment" are substantially similar to registrant's services of "providing access to an electronic bulletin board featuring information concerning heavy equipment available for sale or lease." Both services are directed to the sale of equipment and are offered over the Internet. Applicant makes much of the fact that its services are directed to lawn and farm equipment whereas registrant's services involve heavy equipment. As pointed out by the Examining Attorney, however, "heavy equipment" is a broad term which could include certain types of farm and lawn equipment. *In re Elbaum*, 211 USPQ 639 (TTAB 1981). Moreover, the record is devoid of any evidence upon which we can conclude, as applicant urges, that "heavy equipment" refers to a category of equipment that is separate and distinct from "farm and lawn equipment." To the contrary, the farm tractor depicted on applicant's

specimen might very well be characterized as "heavy equipment." The respective bulletin boards are likely to be accessed by the same classes of purchasers which would include farmers.

Insofar as the marks IRON-WEB and IRON NET are concerned, we find that the marks are similar. The marks are identical in construction, both beginning with the term "IRON" (which in the context of the respective services is suggestive of heavy equipment and/or farm equipment) followed by a term referring to the Internet.³ Any differences in sound and appearance clearly are outweighed by the identity in connotation. In sum, the marks, when used in connection with the related services at issue, engender substantially similar overall commercial impressions. Although both marks are somewhat suggestive, they suggest the same idea when used in connection with the services, namely the purchase of heavy equipment and/or farm equipment over the Internet. Notwithstanding the suggestiveness, however, we hasten to add that the record

³ In this connection, we take judicial notice of the dictionary listing of the term "Internet." The definition indicates that the Internet is informally known by other names, including "the Net" and "the web." *net.speak--the internet dictionary* (1994). Applicant recognizes that the terms are "indicative of Internet terminology, any [sic] therefore, do not add any significant arbitrariness to either of the marks involved." (brief, p. 6)

is devoid of evidence of any third-party uses or registrations of similar marks in the field.

We recognize applicant's point that purchasers of the respective services are sophisticated. Given the similarities between the marks and services at issue, however, even these sophisticated purchasers likely would not be immune from source confusion.

Applicant's allegation that there are no known instances of actual confusion does not compel a different result. As a *du Pont* factor, the absence of actual confusion weighs, of course, in applicant's favor. The probative weight is limited, however, by the fact that there are no specifics regarding the extent of use by applicant or registrant. Thus, there is no way to assess whether there has been a meaningful opportunity for confusion to occur in the marketplace. In any event, the test under Section 2(d) of the Trademark Act is the likelihood of confusion. *Weiss Associates Inc. v. HRL Associates Inc.*, 902 F.2d 1546, 14 USPQ2d 1840, 1842-43 (Fed. Cir. 1990), aff'g, 12 USPQ2d 1819 (TTAB 1989); and *Gillette Canada Inc. v. Ranir Corp.*, 23 USPQ2d 1768, 1774 (TTAB 1992).

Lastly, to the extent that any of the points argued by applicant cast doubt on our ultimate conclusion on the

issue of likelihood of confusion, we resolve that doubt, as we must, in favor of the prior registrant. In re Hyper Shoppes (Ohio), Inc., 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); and In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

We conclude that consumers familiar with registrant's services of providing an electronic bulletin board, featuring information concerning heavy equipment available for sale or lease, under the mark IRON NET would be likely to believe, upon encountering applicant's substantially similar mark IRON-WEB for an electronic bulletin board featuring information relative to the sale, service and marketing of farm and lawn equipment, and providing information about farm and lawn equipment, that the services were rendered by or are somehow associated with or sponsored by the same entity.

Decision: The refusal to register is affirmed.

T. J. Quinn

G. D. Hohein

B. A. Chapman
Administrative Trademark
Judges, Trademark Trial

Ser No. 75/353,692

and Appeal Board

Ser No. 75/353,692